U.S. Department of Labor

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Issue Date: 27 May 2004

CASE NO.: 2004-SOX-00019

In the Matter of:

BRIAN HOPKINS,
Complainant,

v.

ATK TACTICAL SYSTEMS,
Respondent.

Before: PAMELA LAKES WOOD
Administrative Law Judge

RECOMMENDED DECISION AND ORDER DISMISSING COMPLAINT AND DENYING SANCTIONS

The instant case arises under the employee protection (whistleblower) provisions of the Sarbanes-Oxley Act of 2002 (the "Act"), Public Law 107-204, codified at 18 U.S.C. §1514A.[1] For the reasons set forth below, I find that this case must be dismissed based upon lack of subject matter jurisdiction and failure to state a cause of action cognizable under the Act. I also find no basis for remanding this matter and Respondent's claim for attorney fees is denied.

PROCEDURAL BACKGROUND

Complainant Brian Hopkins, through counsel, filed a letter complaint dated October 8, 2003[2] with the Secretary of Labor, alleging that he had been subjected to a hostile work environment and was ultimately terminated because he was a whistleblower. Jurisdiction was premised upon "18 USC Sec. 1514A." The complaint was referred to the Occupational Safety and Health Administration (OSHA) in Philadelphia for investigation. On December 4, 2003, the Regional Supervisory Investigator, William D. Seguin, advised the Respondent ATK Tactical Systems (ATK) that a complaint had been filed and separately, on the same date, advised that the investigation had been completed and the complaint was found to lack merit. In another letter,

[1] The whistleblower provisions appear at title VII of the Act, which is designated as the Corporate and Criminal Fraud Accountability Act of 2002.

[2] The complaint bears a stamped date which is partially obscured. In view of the uncertainty as to date of receipt, a filing date of October 8, 2003 will be accepted for purposes of this Decision and Order.

also dated December 4, 2003, the Regional Administrator of OSHA, Richard D. Soltan, advised the Complainant of the Secretary's Findings. Specifically, the Secretary determined that the complaint was not timely filed because it alleged Complainant's discharge on June 4, 2002[3] but was not filed within 90 days of the date of the discharge or other discriminatory action, as required by the Sarbanes-Oxley Act.

Complainant appealed the Secretary's findings by letter of January 3, 2004, filed by overnight mail and received on January 6, 2004. In that letter, Complainant, through counsel, asserted that the complaint was timely filed "under all the circumstances" and that he "was terminated for protected activity within the meaning of the act and has suffered harm as a result."

On February 5, 2004, I issued a Notice of Assignment and Order, which ordered the parties to state their positions on the preliminary issues of whether this tribunal has jurisdiction by virtue of the statute of limitations in the Act and whether the complaint fails to state a cause of action under the Act, as well as to indicate whether a formal hearing is required for resolution of these preliminary issues. On March 4, 2004, Respondent asserted that the complaint was untimely and failed to state a prima facie case under the Act, and Respondent further sought reimbursement for attorney fees not to exceed $1000 because the complaint is allegedly frivolous and brought in bad faith. Complainant did not respond. Neither party has advised that a hearing is necessary.

ALLEGED FACTS

The October 8, 2003 letter complaint indicates that it is a complaint filed on behalf of Complainant Brian Hopkins against his employer, ATK Tactical Systems, LLP "under 18 USC Sec. 1514A" and states the following in support:

> Mr. Hopkins learned in November 2002 (sic) that the autoclave in his employer's Cumberland, Maryland site where he worked was releasing thousands of gallons of sludge water into the ground water system. Mr. Hopkins brought this problem to the attention of his superiors but received [no] response. However, Mr. Hopkins continued to look into the problem and bring it and new developments concerning it to the attention of his employer.
>
> Mr. Hopkins stated to his Process Engineer Manager that he felt it was important for him to bring the situation to the attention of his employer's authorities in the main facility in Keyser, West Virginia, but the Process Engineer Manager told him he, "...better not do that." Subsequently, Mr. Hopkins was subject to a hostile work environment at the hands of his employer.
>
> Further research into the problem demonstrated to Mr. Hopkins that poor maintenance had caused an immense sludge build up. On May 27, 2002 (sic)

[3] In its March 4, 2004 response, the Respondent clarified that the termination actually took place a year later, on June 4, 2003 (following a May 30, 2003 suspension) and asserted that Complainant received written confirmation of termination via certified mail on June 5, 2003. This matter is discussed further below.

> [should be 2003],[4] Mr. Hopkins reviewed with his Production Supervisor that the autoclave, which had been slated for yearly inspections, had never been inspected. Mr. Hopkins shared these findings with the employer's Safety Man[a]ger.
>
> Subsequently, Mr. Hopkins asked his employer why it was not taking the same procedures regarding its autoclave as other ATK facilities. Mr. Hopkins received no answer.
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> Several days later, Mr. Hopkins was suspended for posting improper instant messages. The nature of the messages was not revealed to him but the employer suggested he resign now.
>
> Several days later, on June 2, [2003], Mr. Hopkins filed complaints about his findings with the EPA and the OSHA.
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> On June 4, [2003], the employer terminated Mr. Hopkins accusing him of using pornographic internet sites. Mr. Hopkins denies the allegation and states it is a pretext to cover up the employer's true purpose which is to fire him as a whistleblower.

Based upon the above, the Complainant sought reinstatement (together with an order that he not be subject to harassment), back pay, compensatory damages, and attorney fees.

In a response to the Show Cause Order, Respondent ATK asserts that the Complainant was suspended on May 30, 2003 and terminated on June 4, 2003 for inappropriate use of the Internet. Respondent asserts that OSHA and the West Virginia Environmental Protection Agency inspected the ATK facility and, following a review of records relating to the autoclaves about which Complainant complained, found ATK's procedures and inspections to be in compliance.

For purposes of this Decision and Order, I will accept the facts as alleged by Complainant, with the pertinent dates corrected. In this regard, the complaint is inconsistent on its face, in that it alleges protected activity occurring in November 2002 leading to retaliatory action in May and June 2002. As Complainant has not responded to the clarification provided by the Respondent, I will accept the Respondent's assertion that the alleged adverse employment actions occurred in May and June of 2003.

LEGAL BACKGROUND

Section 806 of the Act, *Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud*, amended title 18 of the United States Code by adding a new section 1514A, *Civil action to protect against retaliation in fraud cases.* Subsection (a) of the new section provided whistleblower protection for employees of publicly traded companies and provided that no such company or its officers, employees, contractors, subcontractors, or agents "may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against

[4] See footnote 3, above.

an employee in the terms and conditions of employment" because the employee engaged in certain lawful acts:

> (1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341 [*fraud and swindles*], 1342 [*fraud by wire, radio, or television*], 1344 [*bank fraud*], or 1348 [*securities fraud*], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—
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> (A) a Federal regulatory or law enforcement agency;
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> (B) any Member of Congress or any committee of Congress; or
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> (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
>
> (2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1342, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

Paragraph (b) specifies how an enforcement action may be brought by such an aggrieved employee and paragraph (c) provides for remedies. Under paragraph (b)(2)(D):

> (D) STATUTE OF LIMITATIONS. – An [enforcement] action . . . shall be commenced not later than 90 days after the date on which the violation occurs.

Complaints filed with the Secretary of Labor are to be governed by the rules and procedures set forth in 42 U.S.C. §42121(b) [the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, also known as "AIR 21."] 18 U.S.C. §1514A(b)(2)(A).

Implementing interim regulations for the Sarbanes-Oxley Act appear at 29 C.F.R Part 1980.[5] These regulations include a provision allowing an administrative law judge, upon notice to the parties, to waive any rule or issue orders "that justice or the administration of the Act requires" based upon special circumstances or good cause shown. *See* 29 C.F.R. § 1980.115. Under section 1980.103, a discrimination complaint must be filed in writing with the appropriate OSHA Area Director "[w]ithin 90 days after an alleged violation of the Act occurs (i.e., when the discriminatory decision has been both made and communicated to the complainant)."

[5] The interim regulations appear at 68 Fed. Reg. 31859 (May 28, 2003), and they are also accessible on the Office of Administrative Law Judges website, www.oalj.dol.gov. The Act is also reproduced on the website.

Section 1980.104(b) provides that "[a] complaint of an alleged violation will be dismissed unless the complainant has made a prima facie showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint."

DISCUSSION

I. The complaint must be dismissed because it is untimely under the statute of limitations set forth in the Act.

The statute of limitations in the Act, set forth above, requires that an enforcement action "be commenced not later than 90 days after the date on which the violation occurs." 18 U.S.C. §1514A (b)(2)(D). The regulations clarify that the period does not begin to run until the discriminatory decision has been communicated to the employee. 29 C.F.R. §1980.103.

Here, the Complainant was terminated on June 4, 2003 and his complaint was filed no earlier than October 8, 2003, when it was dated. As noted above, OSHA determined that the complaint was not timely filed as it was not filed within 90 days of Complainant's discharge. Although OSHA accepted the discharge date alleged in the complaint of June 4, 2002, the complaint would be untimely even if the discharge date were corrected to June 4, 2003. Accepting that date, the complaint was not filed until 126 days later, well after the 90-day period expired. Complainant has not disputed that he received contemporaneous notice of his termination. *See* 29 C.F.R. §1980.103 (providing that limitations period will run from date of communication of adverse action). Nor has Complainant asserted that an earlier, oral or written complaint was made to OSHA (*see Roberts v. Rivas Environmental Consultants, Inc.*, 1996-CER-1 (Admin. Review Bd., Sept. 17, 1997)). Moreover, Complainant has not asserted a basis for equitable tolling or estoppel (*see Moldauer v. Canandaigua Wine Co.*, 2003-SOX-26 (ALJ Nov. 14, 2003), *citing Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000); *see also Shelton v. Oak Ridge National Laboratories*, ARB Case No. 98-100, ALJ No. 1995-CAA-19 (March 30, 2001).) His vague assertion that his complaint was filed in time under all the circumstances is insufficient to excuse the untimely filing. Accordingly, the complaint must be dismissed as untimely.

II. The complaint must be dismissed because it fails to state a cause of action cognizable under the Act.

The Sarbanes-Oxley Act provides whistleblower protection for employees of publicly traded companies who provide information or participate in an investigation relating to violations of certain criminal code provisions relating to fraud (including "fraud and swindles"; "fraud by wire, radio, or television"; bank fraud; and securities fraud), rules or regulations of the Securities and Exchange Commission, or any provisions of Federal law relating to fraud against shareholders. The legislative history of the Act makes it clear that fraud is an integral element of a cause of action under the whistleblower provision. *See, e.g.* S. Rep. No. 107-146, 2002 WL 863249 (May 6, 2002) (explaining that the pertinent section "would provide whistleblower protection to employees of publicly traded companies who report acts of fraud to federal officials with the authority to remedy the wrongdoing or to supervisors or appropriate individuals within their company.") The provision is designed to protect employees involved "in detecting and

stopping actions which they reasonably believe are fraudulent." *Id.* In the securities area, fraud may include "any means of disseminating false information into the market on which a reasonable investor would rely." *Ames Department Stores Inc., Stock Litigation,* 991 F.2d 953, 967 (2d Cir. 1993) (addressing SEC antifraud regulations). While fraud under the Act is undoubtedly broader, an element of intentional deceit that would impact shareholders or investors is implicit.

The protected activity alleged in the complaint involves the Complainant's reporting (both internally and to regulatory agencies) of ATK's release of sludge water into the ground water system due to poor maintenance and overdue inspections. The complaint does not address any kind of fraud and it does not involve transactions relating to securities. Moreover, there has been no allegation that the activities complained of involved intentional deceit or resulted in a fraud against shareholders or investors. Therefore, the matters complained of within the complaint do not fall within the purview of the employee protection provisions of the Act.

In its response of March 4, 2004, Respondent ATK argues that the Complainant has failed to make a prima facie case under the Act and that the case is subject to dismissal under 29 C.F.R. §1980.104(b), 68 FR 31865. That section provides that "[a] complaint of alleged violation will be dismissed unless the complainant has made a prima facie showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint." Respondent argues that the complaint fails to make a prima facie showing because (1) Complainant did not engage in protected activity or conduct because his protected activity falls outside of the purview of the Act; (2) ATK did not know that Complainant had engaged in any protected activity or conduct when it decided to terminate him; and (3) Complainant has not proffered any evidence other than the timing of his alleged protected activity and his termination to support an inference that the protected activity was a contributing factor and such an inference cannot be drawn under the circumstances.

The section setting forth the elements of a prima facie case relates to the investigation stage of the process, rather than the hearing phase. I agree that the first element of a prima facie case asserted by ATK has not been satisfied because, assuming the facts in the complaint to be true, Complainant's alleged protected activity falls outside of the purview of the Act. Thus, this case could have been dismissed on that basis at the investigative phase. However, the last two elements asserted by Respondent require evidentiary findings to be made, which would be inappropriate at this stage of the proceedings. Rather, my decision here must be based upon the pleadings, viewed in the light most advantageous to the Complainant.

Apart from the section relied upon by Respondent, this case is also subject to dismissal before me because the complaint fails on its face to assert a claim cognizable under the Act, for the reasons set forth above.

III. There is no basis for remanding this matter for consideration under the environmental whistleblower statutes.

The environmental whistleblower statutes prohibit retaliation against employees for engaging in protected activities related to the enforcement of various environmental protection statutes. *See* 29 C.F.R. Part 24. These statutes include the Water Pollution Control Act, 33 U.S.C. §1367; the Clean Air Act, 42 U.S.C. §7622; CERCLA, 42 U.S.C. §9610; the Safe Drinking Water Act, 42 U.S.C. §300j-9; the Solid Waste Disposal Act, 42 U.S.C. §6971; and the Toxic Substances Control Act, 15 U.S.C. §2622. Each of these statutes includes a 30-day statute of limitations. *See* 20 C.F.R. §24.3(b). However, a 180-day statute of limitations is provided in the amended Energy Reorganization Act (ERA), 42 U.S.C. 5851, which is confined to nuclear safety matters under the Atomic Energy Act. *Id.*

Here, the complaint alleges retaliation because the Complainant reported the wrongful release of "thousands of gallons of sludge water into the ground water system." Therefore, notwithstanding the reference to 18 U.S.C. §1514A, the allegations appears to fall within one or more of the environmental whistleblower statutes (but not the ERA.) Claims based upon the environmental whistleblower statutes are also investigated by OSHA, but the complaint in the instant case was only considered under the Sarbanes-Oxley Act.

There is, however, no basis for remanding this matter back to OSHA for consideration under the pertinent environmental whistleblower provisions because the complaint would also be untimely under any of those provisions.

IV. The allegations are not sufficiently frivolous to warrant sanctions, and there is no indication of bad faith.

As a final matter, Respondent seeks attorney fees up to $1000 under 29 C.F.R. §1980.110(b), 68 FR 31867, which provides:

> . . . If, upon the request of the named person [respondent], the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

This provision is derived from a similar provision in AIR 21. *See* 49 U.S.C. §42121(b)(3)(C); 29 C.F.R. §1979.109(b).[6] In analyzing that provision, Administrative Law Judge Rudolf L. Jansen stated:

> AIR 21 includes a provision that permits an award of attorney's fees, up to $1,000, to the employer if the complainant has brought a claim in bad faith or the claim is frivolous. 29 C.F.R. §1979.109(b) (2002). Legislative history of AIR 21

[6] Regulations under both AIR 21 and the Sarbanes-Oxley Act also authorize the Administrative Review Board to assess attorney's fees under the same circumstances and to the same extent. 29 C.F.R. §1979.110(e); 29 C.F.R. §1980.110(e).

> reveals that although "frivolous" is not defined by the Act, "unfounded complaints potentially linked to other job-related matters" would be included. H.R. 106-167 (May 28, 1999). The United States Supreme Court has held that an award to a defendant in a Title VII employment discrimination claim should be permitted "to deter the bringing of lawsuits without foundation, to discourage frivolous suits, and to diminish the likelihood of unjustified suits being brought." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 98 S.Ct. 694, 699-700, 54 L.Ed.2d 648 (1978). [7]
>
> The Sixth Circuit has held that imposing sanctions against complainants may have the effect of chilling appeals or claims that involve "serious, controversial, doubtful or even novel questions." *Wilton Corp. v. Ashland Castings Corp.*, 188 F.3d 670 (6th Cir. 1999). However, the Court also determined that sanctions are appropriate where the claim was brought for purposes of harassment, delay or "other improper purposes." *Wilton*, 188 F.3d at 676 (citing *Dallo v. INS*, 765 F.2d 581, 589 (6th Cir. 1995). A complaint is frivolous if it lacks an arguable or rational basis in law or fact. *Brown v. Bargery*, 207 F.3d 863, 866 (6th Cir. 2000) . . . .

Kinser v. Mesaba Aviation, Inc., 2003-AIR-7 (ALJ, Feb. 9, 2004). The authorities that Judge Jansen relied upon in *Kinser* to define "frivolous" relate to the appellate rule addressing sanctions for frivolous appeals (Rule 38 of the Federal Rules of Appellate Procedure) and the statute relating to dismissals of frivolous *in forma pauperis* petitions as a sanction (28 U.S.C. §1915(e)(2)). Applying the AIR 21 provision to the case before him (following a formal hearing at which the complainant was represented by counsel), Judge Jansen found that, even though the complainant had been unable to prove that his protected activities were a contributing factor in the adverse employment actions, the claim was not necessarily meritless; therefore, no attorney's fees were awarded. *Id.* Similarly, in *Peck v. Safe Air International, Inc.,* ARB No. 02-028, ALJ No. 2001-AIR-3 (ARB Jan. 30, 2004), the Administrative Review Board declined to award attorney fees under AIR21 when the administrative law judge found that the *pro se* complainant had maintained a firm and sincere belief that he had been the victim of retaliatory termination, even though he did not prevail following a hearing on the merits.

Rule 38, Federal Rules of Appellate Procedure, allows the imposition of sanctions if a party or attorney files an appeal, petition or motion "that is frivolous or interposed for an improper purpose, such as to harass or to cause unnecessary delay." In *Reliance Insurance Co. v. Sweeney Corp.,* 792 F.2d 1137, 1138 (D.C. Cir. 1986), the Court of Appeals for the D.C. Circuit explained that "[a]n appeal is considered frivolous when its disposition is 'obvious,' and the legal arguments are 'wholly without merit.'" In *Reliance*, the appellant's counsel submitted a conclusory opposition to a summary judgment motion without stating supporting grounds at the district court level. On appeal, counsel submitted a six-page appellate brief and failed to advance supporting facts or theories either in the brief or at oral argument. In addition, appellant and its counsel did not respond to a show cause order, asking them to show cause why they should not be sanctioned. Based upon the appellant's unwillingness to surrender coupled with an even

[7] The title VII provision addressed in *Christiansburg* allows attorney fees to be awarded to a prevailing party and does not include a frivolousness requirement.

greater unwillingness to develop its legal arguments, the D.C. Circuit assessed attorney fees as a sanction against both appellant and its counsel.

Another provision relating to frivolous cases appears in 28 U.S.C. §1915(e)(2), relating to indigent claimants. That section allows for dismissal of a case filed *in forma pauperis* when the court determines that the action or appeal "is frivolous or malicious."[8] The Supreme Court has explained that a complaint should be dismissed as frivolous under this provision only if it lacks an arguable basis in law or fact, which means that it contains factual allegations that are "fantastic or delusional" or legal theories that are indisputably meritless. *Neitzke v. Williams,* 490 U.S. 319, 325, 327-28 (1989). The section's "term 'frivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.* at 325. The Supreme Court noted that the standard is stricter for dismissal of a claim as a sanction under this section than for dismissal of an action for failure to state a claim under Rule 12(b) of the Federal Rules of Civil Procedure. *Id.* at 329.

In the instant case, Respondent argues that Complainant's counsel has "utterly failed to proffer any mitigating circumstances for the late filing of his complaint or any rationale for why his alleged protected activity is covered by the Act." Further, Respondent argues that the complaints filed with OSHA and the West Virginia EPA "were both unfounded and made at a time when Mr. Hopkins was suspended pending investigation for termination" and "were clearly made in an attempt to manufacture a whistleblower claim from whole cloth." Under these circumstances, Respondent argues that "this untimely complaint is both frivolous and brought in bad faith," thereby entitling Respondent to attorneys' fees.

Although the claim borders on frivolous when considered under the Sarbanes-Oxley Act, I have decided not to impose sanctions for several reasons. First, the complaint would clearly **not** be frivolous if it were brought under the whistleblower provisions of the environmental statutes, in which case the Complainant would have had the opportunity to establish a basis for equitable tolling or estoppel. Second, while Complainant has neither responded to my Order nor sought voluntary withdrawal of the complaint, Complainant's lack of response to the Show Cause Order could be interpreted as a concession that this case should be dismissed, and the Complainant has not shown an intention to proceed without a factual or legal basis for doing so. Third, Respondent has not asserted any prejudice nor is there any indication of prejudice, as this case is being dismissed at an early stage of the proceedings. Fourth, I do not find that the circumstances presented here evidence bad faith, harassment, or improper motives, as Respondent has alleged, and Respondent has failed to support those allegations with any supporting details or evidence.

Finally, and most importantly, I find that sanctions are inappropriate in view of the relative newness of the Sarbanes-Oxley Act and the consequent uncertainty of its parameters. In this regard, while the complaint here is meritless, it would be difficult to conclude that any complaint alleging that the reporting of wrongful activity by a publicly traded corporation led to an adverse employment action, would lack "an arguable basis in law or fact." It would also be difficult to find that the disposition of such an action would be "obvious" or that any legal

[8] In 1996, the section was amended to provide for dismissal upon the additional ground of failure to state a claim on which relief can be granted. Pub. L. 104-134 §101, 110 Stat. 1321-73 (Apr. 26, 1996).

arguments made would be "wholly without merit" under the Act when there is so little authority interpreting it. Moreover, the improvident imposition of sanctions could well have a chilling effect upon the assertion of valid claims under the Act. Accordingly, Respondent's request for attorney fees is denied.

CONCLUSION

In view of the above, the complaint in this matter must be dismissed because it is untimely and because it does not state a cause of action cognizable under the Sarbanes-Oxley Act. Further, there is no basis for its consideration under the environmental whistleblower statutes, as it is untimely under those statutes. Finally, Respondent's request for attorney's fees is denied.

ORDER

IT IS HEREBY RECOMMENDED that the complaint in this matter be, and hereby is **DISMISSED**; and

IT IS FURTHER ORDERED that Respondent ATK's request for attorney's fees be, and hereby is **DENIED.**

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PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

NOTICE OF APPEAL RIGHTS: This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b), 68 Fed. Reg. 31860 (May 29, 2003).